and by selling it at a lower price, it induced pharmacists to buy and use it for that purpose. *Held*, that by such conduct the defendant made itself a party to the deception of the ultimate purchaser, and was chargeable with unfair competition, and that to prevent such deception it should be enjoined from using chocolate in its preparation. *Eli Lilly & Co.* v. *Wm. R. Warner & Co.*, 275 Fed. 752.

The unfair competition is in the deceit of the ultimate purchaser. It is no defense that the retailer is not deceived. *Lever* v. *Goodwin* [1887], 36 Ch. Div. 1; *George G. Fox Co.* v. *Glynn*, 191 Mass. 344, 9 L. R. A. (n. s.) 1096. See also *Federal Trade Commission* v. *Winsted Hosiery Co.*, cited in the following note. The precise question presented by the principal case is whether injunctive relief may be had against the manufacturer when the actual fraud is committed by the retailer. That this relief may not be had when he is unconnected with the fraud except for supplying the instrument with which it was committed was accepted in the case of *Hostetter* v. *Fries*, 17 Fed. 620, and in *Royal Co.* v. *Royal*, 122 Fed. 337, it was suggested, but not decided, that if tricky retailers, knowing better, represent the defendant's articles as the goods of the complainant, it is probably not a matter for which the defendant is responsible. The court in the principal case was careful to state that the question was not whether the defendant was responsible for the fraud of the retailers, but whether, in counseling fraud and supplying an innocent means, it was itself guilty of fraud. Some courts have held that it is enough to show that the defendant made it possible for the retailer to sell the goods in such a way as to deceive the ultimate purchaser. *New England Awl & Needle Co.* v. *Marlborough Awl & Needle Co.*, 168 Mass. 154. For a collection of cases, see note to *George G. Fox Co.* v. *Glynn*, 9 L. R. A. (n. s.) 1096. The court's statement of the question in the principal case is due to the fact that federal courts adhere to the rule that a fraudulent intent is necessary in a case of unfair competition, and must be proved in order to claim the intervention of a court of equity. *Hires* v. *Villepuge*, 196 Fed. 890; *Elgin Watch Co.* v. *Illinois Watch Co.*, 179 U. S. 665, 674. A contrary view prevails in England and a number of the state courts. *Singer Mfg. Co.* v. *Wilson* [1877], 3 App. Cas. 376; *Wirtz* v. *Eagle Bottling Co.*, 50 N. J. Eq. 164. In accord with the principal case, holding that relief will be granted against the manufacturer if shown that his purpose in selling the retailer was to defraud the public, are *Coco Cola Co.* v. *Gay Ola Co.*, 200 Fed. 720 (beverage); *Royal Co.* v. *Royal*, *supra* (name); *Lever* v. *Goodwin*, *supra* (wrapper).

UNFAIR COMPETITION—PROTECTION OF THE PUBLIC.—Defendant sold to retailers underwear branded as "gray wool," "natural wool," and the like. Much of it contained, in fact, only a small percentage of wool. The Federal Trade Commission ordered defendant to cease using so deceptive brands. *Held*, the order was within the power of the Commission and valid. *Fed. Trade Com.* v. *Winsted Hosiery Co.* (U. S. Sup. Ct., April 24, 1922).

The defense was that only the public were deceived; that retailers knew

the brands to be inaccurate; that there was, therefore, no unfair competition and the Commission had no power to act. The early part of the Supreme Court's opinion suggests that the interest of the public might be sufficient basis for the order, but its validity is eventually predicated on the fact that by deceiving the public the defendant was in effect unfairly competing with other manufacturers. For comment on the decision in the court below as to the scope of the Commission's powers, see 20 MICH. L. REV. 122, 781, wherein the contrary decision of the lower court is adversely commented on.

WILLS—CONSTRUCTION—IF TWO CLAUSES ARE REPUGNANT, LATER CLAUSE CONTROLS.—Testator gave to his wife all his property to hold in trust for their granddaughter and adopted daughter, Margaret. Upon the death of his wife all the property remaining he gave to Margaret for her sole use and benefit. Finally, he named two persons guardians and administrators until Margaret should be twenty-one. It was adjudged below that these provisions were repugnant, that the later should prevail over the earlier, and that therefore the effect was to give the wife a life interest, with remainder over to Margaret. *Held,* that all could be reconciled, and that the property was given in trust for Margaret, the wife taking nothing. *Martin* v. *Palmer* (Ky., 1921), 234 S. W. 742.

It should be taken as a legal axiom that intent is the pole star in the construction of wills. Citations are not needed to the principles that this intent is to be gathered from the will as a whole, endeavoring, if possible, to give full effect to every part. If one construction will, while another will not, do this, the former is to be preferred, if possible. Usually, as in the principal case, the court is able to find a possible construction that does this, and there is no need to decide which of two clauses is to prevail. Often a later clause modifies or cuts down an earlier. *Greiner* v. *Heins* (Ind. App., 1921), 131 N. E. 20, in which this was not the case because the later clause was not clear. Sometimes the court resorts to implications to overcome apparent conflict. *Porter* v. *Union Trust Company,* 182 Ind. 637. This case, like the principal case, follows the usual statement that if two clauses of a will cannot be reconciled, and are equally specific, the later controls. This is sometimes put on the ground that we deal with a man's last will, and the latest clauses therefore control. But this is merely specious, for the whole will must be regarded as at one moment, viz., at the moment of its execution, the will of the testator, and no part is later in his intent than any other. The mere arrangement of the various paragraphs has no such significance as is often supposed. Indeed, in some jurisdictions the rule is stated to be that if different provisions are so repugnant that both cannot stand the first must prevail. *Hiller* v. *Herrick* (Ia., 1920), 179 N. W. 113. Whichever rule be adopted in the few cases in which reconciliation is not possible, it is a mere rule of convenience, and is not to be applied if from the whole will and the surrounding circumstances it appears that it would defeat the intention of the testator. That intent is to be gathered from the whole will. *Davis* v. *Kendall* (Va., 1921), 107 S. E. 751.